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MEMORANDUM FOR:

FROM:

SUBJECT: Relationship Between the Central Intelligence Agency and The General Accounting Office

The mission of the General Accounting Office (GAO) to assure that federal agency expenditures comport with law, that federal programs achieve their legislative objectives, and that federal funds, property, and personnel are used efficiently requires extensive GAO access to information concerning the activities and financial accounts of government agencies. The mission of the Central Intelligence Agency to produce timely, accurate information in a useful form for policymakers in the federal government requires secrecy, particularly with respect to the sources and methods by which the Agency collects information. The GAO mission requires full GAO access to information; the CIA mission requires limited or no GAO access to certain types of information. The resolution of this conflict in missions has resulted as much from practical experience as from legislation. (U)

#### I. Mission of the General Accounting Office

The General Accounting Office headed by the Comptroller General of the United States is an agency of the legislative branch with broad statutory authority to establish government accounting practices, to investigate government expenditures, and to report its findings to the Congress. The Comptroller General prescribes the principles, standards, and related requirements for accounting systems for executive agencies.<sup>1</sup> The Comptroller General is charged with conducting investigations of all matters relating to the receipt, disbursement, and application of public funds,<sup>2</sup> investigations of any matter as ordered by either House of Congress, or certain committees thereof,<sup>3</sup> expenditure analyses of executive agencies to determine whether public funds have been economically and efficiently administered and expended,<sup>4</sup> reviews of executive agency accounting systems,<sup>5</sup>

<sup>1</sup> 31 U.S.C. 66(a) (1976). Citations refer to sections in title 31, United States Code unless otherwise indicated. (U)

<sup>2</sup> Subsection 53(a). (U)

<sup>3</sup> Id., 53(b). (U)

<sup>4</sup> Id., 60. (U)

<sup>5</sup> Id., 66 (c). (U)

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audits of the financial transactions of every agency of government except as otherwise provided by law,<sup>6</sup> and audits of federal pension funds and plans.<sup>7</sup> Based on information the General Accounting Office develops in its investigations, analyses, reviews, and audits, the Comptroller General must report to the Congress with recommendations for legislation related to receipt, disbursement, and application of public funds,<sup>8</sup> expenditures or contracts made in violation of law,<sup>9</sup> adequacy and effectiveness of internal agency accounting,<sup>10</sup> and efficiency and economy in agencies' administration and expenditure of public funds.<sup>11</sup> (U)

The General Accounting Office audits<sup>12</sup> an agency to achieve the following objectives:<sup>13</sup>

- (1) Program Success - to assure that agencies conduct activities authorized by law in a manner calculated to achieve intended Congressional objectives.
- (2) Efficiency and Economy - to assure the efficient and economical conduct of programs and activities and use of funds, property, and personnel.

<sup>6</sup> Subsection 67(a). (U)

<sup>7</sup> 31 U.S.C. 68a(a) (1976) (Supp. III 1979). Subsection 68a(b) excludes federal pension plans for Central Intelligence Agency officers and employees from this audit. (U)

<sup>8</sup> Subsection 53(a). (U)

<sup>9</sup> Subsection 53(c). (U)

<sup>10</sup> Subsection 54(d). (U)

<sup>11</sup> Subsection 60. Whenever any of these General Accounting Office reports contain recommendations to a federal agency head, the agency head must submit a responsive report within sixty days to the House Government Operations Committee and the Senate Governmental Affairs Committee explaining the agency's action with respect to the recommendations. In addition, at the next following request by the agency for appropriations, the agency head must submit a report responsive to the recommendations of the GAO report to the House and Senate Appropriations Committees. 31 U.S.C. 1176 (1976). See Part IV below. (U)

<sup>12</sup> "Audit" as employed herein is a generic term for investigations, analyses, reviews, and audits, rather than a precise accounting term of art. (U)

<sup>13</sup> See Report of Agency Task Force Review of GAO Audit Options (Secret), Central Intelligence Agency, 12 January 1976, 4 (hereafter cited as Agency GAO Task Force Report) (Tab A). (U)

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- (3) Proper Accounting - to assure that agency accounting systems comply with GAO accounting requirements and that funds, receipts, and expenses are properly accounted for.

Given the magnitude of its task of auditing the entire government, the General Accounting Office tends largely to focus upon agency programs' adherence to law and Congressional intent, agency internal management controls, and agency budgetary and financial control practices. This focus encourages agencies to develop the sound fiscal and management controls with which to police themselves, reducing the need for more extensive GAO auditing of agencies. (U)

Access to information held by federal agencies is essential to the mission of the General Accounting Office. Recognizing that the GAO cannot verify the propriety of the activities and expenditures of an agency without access to the records of that agency, Congress has granted the Comptroller General a broad statutory right of access to whatever information the Comptroller General requires from other agencies.<sup>14</sup> In addition, the Comptroller General has access to information held by private persons where provided for by law or contract.<sup>15</sup> Because of the recalcitrance of federal agencies and private persons in furnishing information to the Comptroller General, Congress in 1980 provided means whereby the Comptroller General may enforce his requests for information. (U)

When a federal agency fails to furnish to GAO information it requests, the Comptroller General may enforce the GAO request by taking the following steps in serial order:<sup>16</sup>

- (1) sending to the withholding agency head a written request for information to which the agency head must respond within 20 days by furnishing the information or describing withheld material and the reasons for withholding;
- (2) reporting to the President, the Director of the Office of Management and Budget, the Attorney General, the agency head involved, the Speaker of the House, and the President of the Senate concerning the agency's withholding of information; and

<sup>14</sup> 31 U.S.C.A. 54(a) (1976) (1981 pocket part). The statute specifically excludes from the Comptroller General's right of access expenditures for foreign affairs purposes approved by the President and accounted for by certificate of the Secretary of State under 31 U.S.C. 107 (1976). (U)

<sup>15</sup> 31 U.S.C.A. 54(c) (1976) (1981 pocket part). For examples of statutes granting GAO access to private persons information, see 15 U.S.C. 771 (1976) (energy information), 42 U.S.C. 4592 (1976) (federal financial assistance information). (U)

<sup>16</sup> 31 U.S.C.A. 54(b) (1976) (1981 pocket part). (U)

- (3) applying to the United States District Court for the District of Columbia for an order requiring the agency head to produce the material withheld.

To obtain information from federal contractors or other private persons to whose information the Comptroller General has access by law or contract, the Comptroller General may issue subpoenas for the production of written materials.<sup>17</sup> Upon failure of the subpoenaed person to furnish the information sought, the Comptroller General may apply to the United States District Court within whose territorial jurisdiction the person resides for an order to compel production of the information.<sup>18</sup> (U)

## II. Limitations on General Accounting Office Authority with Respect to the Central Intelligence Agency

The secrecy essential to the effective conduct of intelligence activities conflicts with the broad access to information essential for the effective conduct of GAO audits. Several federal statutes resolve this conflict by restricting the access of the General Accounting Office to certain types of information related to intelligence activities. These statutes limit the authority of the GAO (1) to investigate unvouchered expenditures accounted for by certificate of the Director of Central Intelligence, (2) to enforce its requests for intelligence-related information, and (3) to obtain information involving intelligence sources and methods. (U)

For confidential, extraordinary, or emergency purposes, the Director of Central Intelligence may expend monies made available to the Central Intelligence Agency and account for them solely by his certificate for the amount expended.<sup>19</sup> The General Accounting Office has access to all information relating to unvouchered expenditures accounted for by the certificate of the head of any executive agency,<sup>20</sup> except for the unvouchered expenditures of the DCI<sup>21</sup> and expenditures related to certain sensitive intelligence or law enforcement

<sup>17</sup> 31 U.S.C.A. 54(c) (1976) (1981 pocket part). (U)

<sup>18</sup> Id. (U)

<sup>19</sup> Central Intelligence Agency Act of 1949, subsection 8(b), 50 U.S.C. 403j(b) (1976). This subsection also provides that "the sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds...." (U)

<sup>20</sup> 31 U.S.C.A. 67(f) (1) (1976) (1981 pocket part). (U)

<sup>21</sup> Id., f(3) (A). (U)

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activities when exempted by the President.<sup>22</sup> Thus, the statutory duty of the GAO to conduct limited audits of unvouchered funds does not extend to CIA unvouchered funds. (U)

The authority of the General Accounting Office to enforce by court order its requests for information from other federal agencies or by subpoena and court order its requests for information from federal contractors does not extend to material related to activities designated by the President as foreign intelligence or foreign counterintelligence activities.<sup>23</sup> Since most of the activities of the CIA and its contractors are foreign intelligence or foreign counterintelligence activities as defined by Executive Order,<sup>24</sup> the Comptroller General cannot compel production of most CIA information. (U)

The statutory responsibility assigned to the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure<sup>25</sup> constitutes a final limitation on the General Accounting Office's access to Central Intelligence Agency information. In addition, a statute specifically implementing the responsibility to protect intelligence sources and methods exempts the CIA from any law requiring disclosure of CIA organization, functions, names, official titles, salaries, or numbers of personnel.<sup>26</sup> The DCI's statutory responsibility to protect intelligence sources and methods from unauthorized disclosure may require him to limit GAO access to information which would risk unauthorized disclosure of intelligence sources and methods. The General Accounting Office does not recognize the DCI's intelligence sources and methods protection authority as a basis for withholding information from GAO. In GAO's opinion, the CIA may only withhold from GAO information underlying unvouchered funds expenditures accounted for by the DCI's certificate; however, GAO recognizes that it has no means by which to enforce its claimed right of access to all CIA information not related to unvouchered expenditures.<sup>26.1</sup> (U)

<sup>22</sup>Id., f(3)(B). (U)

<sup>23</sup>31 U.S.C.A. 54(d)(1)(1976)(1981 pocket part). (U)

<sup>24</sup>Exec. Order No. 12036, 3 C.F.R. 112 (1979). (U)

<sup>25</sup>National Security Act of 1947, paragraph 102(d)(3), 50 U.S.C. 403(d)(3)(1976). (U)

<sup>26</sup>Central Intelligence Agency Act of 1949, section 6, 50 U.S.C. 403g (1976). (U)

<sup>26.1</sup>See Letter of 27 February 1979, from Comptroller General Elmer B. Staats, to Representative John D. Dingell, GAO Document B-157767, with Appendix, 2 (Tab B). (U)

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### III. History of the GAO/CIA Relationship

Beginning in August 1946, the General Accounting Office conducted audits of the Central Intelligence Group, the institutional predecessor of the CIA, under arrangements agreed upon between the GAO and the CIG.<sup>27</sup> Audits continued under these arrangements after creation of the Central Intelligence Agency by the National Security Act of 1947.<sup>28</sup> With passage of the Central Intelligence Agency Act of 1949, the Agency acquired broad powers to expend its appropriations without regard to statutes regulating government expenditures, and where necessary for reasons of confidentiality, to make unvouchered expenditures accounted for solely by the Director's certificate of the amount expended.<sup>29</sup> The Director of Central Intelligence requested a GAO site audit of CIA vouchered expenditures in 1949.<sup>30</sup> The GAO limited its audit to a review of vouchered expenditures of appropriations to determine whether the Agency spent the funds in accordance with applicable statutes. GAO made no reports concerning its audits to anyone outside CIA; the GAO site audit staff discussed questionable expenditures informally with the Agency Comptroller's Office.<sup>31</sup> The GAO did not review Agency policies, practices, procedures, or unvouchered expenditures.<sup>32</sup> (U)

During the 1950's,<sup>33</sup> in accordance with the Accounting and Auditing Act of 1950,<sup>34</sup> the General Accounting Office broadened its audits of government agencies to include an examination of each agency's expenditures and programs to determine whether the agency used its personnel and property, and expended its funds, in an efficient, economical, and effective manner. However,

<sup>27</sup> See Agency GAO Task Force Report, 2. (U)

<sup>28</sup> 50 U.S.C. sections 401 et seq. (1976). (U)

<sup>29</sup> Central Intelligence Agency Act of 1949, section 8, 50 U.S.C. 403j(b) (1976). (U)

<sup>30</sup> Agency GAO Task Force Report, 2. Vouchered expenditures are those accounted for in conformance with standard government-wide statutes and regulations governing expenditures. Unvouchered funds, also called confidential funds, are those accounted for solely by the DCI's certificate for the amount expended. (U)

<sup>31</sup> Letter of 10 May 1974, from Acting Comptroller General R.F. Keller, to Senator William Proxmire (D., WI), 7 (hereafter cited as Keller Letter) (Tab C). (U)

<sup>32</sup> Id., 8. (U)

<sup>33</sup> 31 U.S.C. 65 et seq. (1976) (U)

<sup>34</sup> Keller Letter, 8. (U)

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GAO continued through the 1950's to restrict its audits of CIA to a limited review of vouchered expenditures with reports only to CIA officials.<sup>35</sup> (U)

In 1959, the General Accounting Office concluded that the broader comprehensive audit used by GAO elsewhere in the government would be appropriate for audits of the CIA.<sup>36</sup> At the request of the Chairman of the House Armed Services Special Subcommittee on Intelligence,<sup>37</sup> the DCI and the Comptroller General agreed on principles to govern comprehensive GAO audits of CIA.<sup>38</sup> After a two year trial period of comprehensive audits, the GAO concluded that the restrictions the Agency placed on GAO access to Agency information prevented the GAO from conducting worthwhile audits.<sup>39</sup> GAO also decided that the reinstitution of the previously conducted limited financial audits of CIA vouchered funds would not be worthwhile.<sup>40</sup> Accordingly, GAO proposed to discontinue all GAO reviews of the Central Intelligence Agency.<sup>41</sup> At the same time, a major Agency reorganization

<sup>35</sup> Id. (U)

<sup>36</sup> Id. (U)

<sup>37</sup> Letter of 19 June 1959, from Representative Paul J. Kilday, to the Director of Central Intelligence, 3. (U)

<sup>38</sup> Letter of 16 October 1959, from the Director of Central Intelligence Allen Dulles, to the Comptroller General. (U)

<sup>39</sup> Keller Letter, 8. (U)

<sup>40</sup> Agency GAO Task Force Report, 3. (U)

<sup>41</sup> Letter of 16 May 1951, from the Comptroller General, to the Chairman House Armed Services Special Subcommittee on Intelligence. (U)

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strengthened the Agency's internal fiscal and management controls.<sup>42</sup> In July 1962, the Chairman of the House Armed Services Committee approved the GAO request to discontinue auditing the CIA.<sup>43</sup> (U)

Since July of 1962, the GAO has conducted only the following special reviews, initiated by Congressional requests, of CIA expenditures and activities:

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(2) Review of Agency divestiture of Air America proprietary (classified).

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In the mid 1970's as political support built for expansion of Congressional oversight of intelligence activities, so also did Congressional support build for GAO comprehensive audits of intelligence activities.<sup>44</sup> Responding to this pressure, the Executive Branch Working Group on the Proposed Intelligence Community Charter planned an arrangement whereby GAO would conduct audits of CIA including unvouchered funds, but only at the request of the Senate Select Committee on Intelligence or the House Permanent Select Committee on Intelligence.<sup>45</sup> However, beginning with the 96th Congress in 1978, Congressional concerns turned from ways to control the Intelligence Community to ways to strengthen it. Legislation to increase the authority of the Comptroller General to audit unvouchered funds and to acquire information from federal agencies and federal contractors, by court order if necessary, contained specific exemptions for Central Intelligence Agency unvouchered funds and sensitive intelligence information.<sup>46</sup> Congressional interest in having the GAO audit the Central Intelligence Agency has evaporated.

<sup>42</sup> Agency GAO Task Force Report, 3. (U)

<sup>43</sup> Letter of 18 July 1962, from Representative Carl Vinson, to the Comptroller General. (U)

<sup>44</sup> See Agency GAO Task Force Report. See also OLC 76-2364 (23 August 1976) discussing the suggestion of the Chairman, Senate Select Committee on Intelligence, that GAO and CIA work out guidelines for resumption of GAO audits of CIA. (U)

<sup>45</sup> See S. 2525, the "National Intelligence Reorganization and Reform Act of 1978," 95th Cong., 2d sess., subsection 123(a). (U)

<sup>46</sup> General Accounting Office Act of 1980, 31 U.S.C.A. 53, 54, 67 (1976) (1981 pocket part). (U)

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The Central Intelligence Agency remains the only agency of government that the General Accounting Office does not audit.<sup>47</sup> (S)

#### IV. Current Concerns in the Relationship Between The General Accounting Office and The Central Intelligence Agency

Controversy between the Central Intelligence Agency and The General Accounting Office has diminished considerably. Two areas of some contention remain: GAO clearances by CIA for compartmented intelligence information and CIA responses to recommendations made by the Comptroller General in GAO reports. (U)

The General Accounting Office often conducts audits of components of the Intelligence Community other than the Central Intelligence Agency.<sup>48</sup> In addition, GAO often requires access

<sup>47</sup> Statement of the Honorable Elmer B. Staats, Comptroller General, New York Times, -9 March 1981, D-5. (U)

<sup>48</sup> Since 1955, GAO has conducted financial site audits of the National Security Agency (NSA) through a small, cleared GAO site audit staff. NSA and GAO have agreed that NSA may regulate the access of GAO personnel to classified and compartmented information, but GAO maintains that NSA may never completely deny GAO access to NSA information, arguing that statutory restrictions on disclosure of NSA information, P.L. 86-36, section 6 (29 May 1959), apply only to disclosure to the public and not to disclosure to GAO. Keller Letter, 11. GAO audits of the Department of Defense have not reviewed DOD intelligence operations; GAO cites restrictions on access to information as precluding worthwhile review. GAO audits of the Department of State have touched on some intelligence matters, but have not focused on the Bureau of Intelligence and Research. In auditing the Federal Bureau of Investigation, GAO has access to all but the most sensitive individual investigative files and certain unvouchered expenditures records when the Attorney General has certified the expenditures. See 28 U.S.C. 537 (1976) and 31 U.S.C.A. 67(f)(3)(B) (1976) (1981 pocket part). See generally Keller Letter, and Congressional Research Service, The Right of Access of The General Accounting Office to Intelligence Agency Data (16 September 1975) (Tab D). (C)

to intelligence information when conducting program management audits of agencies without intelligence missions, to verify the need for the agencies' programs and to measure the effectiveness of those programs.<sup>49</sup> (U)

GAO clearances for access to collateral classified intelligence information remains a matter for each of the various agencies of the Intelligence Community to handle; each agency arranges clearances for GAO personnel according to its usual procedures or per agreement between the agency and GAO.<sup>49.1</sup> In contrast, only the Director of Central Intelligence personally may approve GAO clearances for access to compartmented classified intelligence information.<sup>50</sup> The DCI will not approve requests for GAO access to compartmented information unless the request originates from the Chairman of a Congressional committee at the direction of the Committee and fully explains the need for access.<sup>51</sup> (U)

A recurring problem in the GAO-CIA relationship stems from the statutory requirement that agency heads respond to recommendations contained in GAO reports. When a GAO report contains recommendations to the head of a federal agency, the agency must, within sixty days, send a statement of the agency's action in response to the recommendations to the House Government Operations Committee and the Senate Governmental Affairs Committee. In addition, the agency must, at the time of its next request for appropriations following issuance of the GAO report, send a statement of the agency's action in response to the GAO<sup>52</sup> recommendations to the House and Senate Appropriations Committees. This

<sup>49</sup> GAO typically requests access to compartmented information to verify the need for an effectiveness of Department of Defense weapons procurement programs. See OLC 78-356/1 (27 December 1978), 4. (C)

<sup>49.1</sup> See Letter of 29 January 1980, from Comptroller General Staats, to Director of Central Intelligence Turner (ER 80-6299) (Tab E). (U)

<sup>50</sup> Director of Central Intelligence, Revised Guidelines and Procedures for the Issuance of Compartmented Clearances to the Legislative Branch, 28 June 1979 (Tab F). The DCI's Legislative Counsel serves as the Intelligence Community clearinghouse for GAO requests for access. The Chief, International Division, GAO has exclusive responsibility for GAO liaison with the CIA. (U)

<sup>51</sup> Id., paragraph C. As of 11 June 1981, fifteen General Accounting Office staff members had access approvals for compartmented information. (S)

<sup>52</sup> 31 U.S.C. 1176 (1976). (U)

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reporting requirement applies to CIA just as it does to all other departments and agencies, except as the DCI's responsibility to protect intelligence sources and methods requires otherwise.<sup>53</sup> (U)

## V. Conclusion

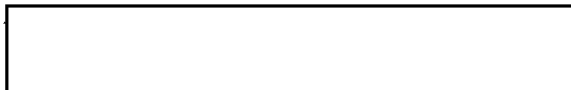
The Congress has sought to meet two fundamentally opposed needs of state: the need for secrecy in the conduct of intelligence activities and the need for access to information for independent auditing. Attempting to meet the need for secrecy in intelligence, Congress granted broad statutory authority to the Director of Central Intelligence to spend government funds without accounting for them and to protect intelligence sources and methods from unauthorized disclosure. Attempting to meet the need for access to information for auditing, Congress has granted unrestricted rights of access to government information to the General Accounting Office. When Congress focused on both needs simultaneously, the need for secrecy in intelligence gained ascendancy over the need for auditor access to information. Congress granted the Comptroller General power to enforce through the courts his previously granted unrestricted right of access to information, but specifically denied him the use of that power to enforce access to intelligence information, maintaining the GAO in the anomalous position of having a right of access which Congress clearly does not want it to exercise.

Thirty four years of experience with the Central Intelligence Agency's conduct of intelligence activities and the General Accounting Office's conduct of auditing activities confirms the wisdom of the Congressional policy recognizing that the role assigned to the General Accounting Office may unduly impair the intelligence functions of government. When GAO conducted audits of the CIA, no one benefited. CIA feared compromise of its sensitive information by GAO, and thus placed restrictions on GAO access to information. Within these limitations, GAO found that the quality of its audits and their usefulness to the Congress could not justify the commitment of scarce GAO auditing resources. Congressional policy and the

<sup>53</sup> OGC 78-7951 (30 November 1978) (Tab G). See OLC 78-3567/1 (27 December 1978) (Tab H) propounding a construction of the statute to require CIA make the Congressional reports only when the GAO recommendations specifically concern the CIA, and not when the recommendations are general government-wide recommendations. The likelihood of GAO reports containing specific recommendations concerning CIA is minimal since GAO does not review CIA activities and expenditures. When GAO makes government-wide recommendations, it regularly informs CIA along with other agencies that they must submit responsive Congressional reports; CIA does not act on such GAO notices. (U/IUO)

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wisdom of experience suggest that the objectives of program success, efficiency and economy, and proper accounting can best be met at the Central Intelligence Agency if Agency managers and auditors, responsible to the DCI and subject to continuing Congressional oversight, perform the role with respect to the CIA that GAO performs with respect to all other government agencies.



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